

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

In re	§	
	§	
EPTMS, INC.,	§	Case No. 17-31729-HCM-11
	§	
Debtor.	§	

FIRST AMENDED MOTION TO REJECT UNEXPIRED LEASE

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely response is necessary for a hearing to be held.

Now comes the Debtor-in-Possession EPTMS, INC. and through its counsel E.P. BUD KIRK files this *First Amended Motion to Reject the Unexpired Lease of non-residential real property which it has with HMMI TWO, LLC for the premises known as 7800 Carr Way, #103, in Rio Rancho, New Mexico, and for cause would show:

1.

Petition date in these Chapter 11 proceedings is October 25, 2017. The Debtor leases a shopping center property at 7800 Carr Way, #103, Rio Rancho, NM from the lessor HMMI TWO, LLC. The lease (hereinafter "the Lease") does not expire until February of 2018.

2.

EPTMS, INC. wishes to reject the Lease because it is burdensome to this estate. EPTMS, INC. has moved out of the store and has no plans to return to the premises.


* The original Motion to Reject the Lease was returned to the Debtor's counsel because of a wrong address. That address has been corrected.

3.

The Lease has less than a year to run, so the formula for computing a proof of claim, in 11 U.S.C. § 502(b)(6), is not applicable, and a proof of claim, if filed, should be a general unsecured claim for the rent unpaid from petition date to lease-end. *In re Q-Masters, Inc.*, 135 B.R. 157 (Bankr. S.D. Fla. 1991).

WHEREFORE, PREMISES CONSIDERED, EPTMS, INC. prays that the rejection of this Lease be approved. Further Debtor prays for all other relief deserved in the circumstances, general or special, at law or equity.

Respectfully submitted this 21st day of November, 2017.

/s/ 
E.P. BUD KIRK
State Bar No. 11508650
600 Sunland Park Dr.
Building Four, Suite 400
El Paso, TX 79912
(915) 584-3773
(915) 581-3452 facsimile
budkirk@aol.com

Attorney for Debtor-in-Possession

CERTIFICATE OF SERVICE

I do hereby certify that on the 21st day of November, 2017, I did cause a copy of the foregoing First Amended Motion to Reject Unexpired Lease to be mailed or delivered to U.S. Trustee, P.O. Box 1539, San Antonio, TX 78205-1539; to EPTMS, INC., 9813 Dyer, Suite 300, El Paso, TX 79924; to Jay W. Hurst, Assistant Attorney General, Bankruptcy & Collections Division MC 008, P.O. Box 12548, Austin, TX 78711-2548; to Corsicana Mattress, c/o Shad Robinson, 100 N. Ritchie Road, Ste. 200, Waco, TX 76712-8544; to WRI North Towne, LLC, c/o Weingarten Realty Investors, 2600 Citadel Plaza Dr., Ste. 125, Houston, TX 77008; to Richard Rosen, Inc., c/o Mounce, Green, Myers, Safi, Paxson, & Galatzan, P.O. Drawer 1977, El Paso, TX 79999; to City of El Paso, c/o Don Stecker, 711 Navarro Street, Ste. 300, San Antonio, TX 78205; to Kingsdown, Inc., c/o Harrel L. Davis, P.O. Box 1322, El Paso, TX 79947-1322; to HMMI Two, LLC, c/o Richard Schoenberg, Schoenberg & Associates, 2934 ½ N. Beverly Glen Circle, Ste. 772, Los Angeles, CA 90077-1724; and to HMMI Two, LLC, c/o Leverick & Musselman, 5120 San Francisco Rd NE #B, Albuquerque, NM 87109.

/s/ 
E.P. BUD KIRK

4688-VN-112017